BEFORE THE
DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:	)	
FRANCIS C.CHUANG, M.D. Certificate No. A-31779	)	Case No. 16-97-73676
Respondent.	)	

DECISION

The attached Default Decision is hereby adopted by the Division of Medical Quality as its Decision in the above-entitled matter.

This Decision shall become effective on April 10, 1998.

IT IS SO ORDERED March 12, 1998.

By: _____
IRA LUBELL, M.D.
Chairperson, Panel A
Division of Medical Quality

DANIEL E. LUNGREN, Attorney General
of the State of California
RICHARD D. GARSKE
Deputy Attorney General,
State Bar No. 50569
Department of Justice
110 West A Street, Suite 1100
Post Office Box 85266
San Diego, California 92186-5266
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Attorneys for Complainant

BEFORE THE
DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: **FRANCIS C. CHUANG, M.D.** 1256 Peacock Hill Santa Ana, CA 92705 Physician's and Surgeon's Certificate No. A31779, Respondent.	NO. 16-97-73676 DEFAULT DECISION [Gov. Code §11520]

FINDINGS OF FACT

1. On or about September 29, 1997, Complainant Ron Joseph, in his official capacity as Executive Director of the Medical Board of California, Department of Consumer Affairs, State of California ("Board"), filed Accusation No. 16-97-73676 against Francis C. Chuang, M.D. ("respondent").

2. On November 23, 1977, the Board issued Physician's and Surgeon's Certificate No. A31779 to respondent. At all times relevant herein, said certificate was in full force and effect.

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Said certificate is delinquent with an expiration date of May 3, 1994.

3. On or about September 29, 1997, Hattie Johnson, an employee of the Board, sent by certified and regular mail a copy of Accusation No. 16-97-73676, Statement to Respondent, Government Code sections 11507.5, 11507.6, and 11507.7, Notice of Defense form, and a Request for Discovery, to respondent's address of record with the Board which was 1256 Peacock Hill Santa Ana, CA 92705 (Certified No. Z 224 353 523). The Board also served respondent at 18452 Hollcrest Avenue, Villa Park, CA 92667 (Certified No. Z 224 353 517). This address was provided by the Board of Physician Quality Assurance, State of Maryland. (Exhibit 1.) The owner/resident of the Villa Park address left a note for the postman with a possible address for respondent in Taiwan and that the named receiver (indicating respondent) never lived in Villa Park and used the address without the consent of the owner/resident. (Exhibit 2.) On or about October 28, 1997, by certified mail (Certified No. R 166 678 971), and on or about January 16, 1998, by regular mail, the aforementioned-documents were sent to respondent at **10, Alley 491 Dounhua Road, Taichung, Taiwan.** (Exhibit 3.) No response to the certified or regular mail has been received. The above-described service was effective as a matter of law pursuant to the provisions of California Government Code section 11505, subdivision (c).

4. Respondent failed to file a Notice of Defense within 15 days after service upon him of the Accusation and

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therefore waived his right to a hearing on the merits of Accusation No. 16-97-73676.

5. Business and Professions Code section 118 provides, in pertinent part:

"(b) The suspension, expiration, or forfeiture by operation of law of a license issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or by order of a court of law, or its surrender without the written consent of the board, shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the license on any such ground."

6. Business and Professions Code section 11506 provides, in pertinent part:

"(b) The respondent shall be entitled to a hearing on the merits if he files a notice of defense, and any such notice shall be deemed a specific denial of all parts of the accusation not expressly admitted. Failure to file such notice shall constitute a waiver of respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing. ..."

7. Business and Professions Code section 11520 provides, in pertinent part:

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"(a) If the respondent fails to file a notice of defense or to appear at the hearing, the agency may take action based upon the respondent's express admissions or upon other evidence and affidavits may be used as evidence without any notice to respondent; ..."

8. The Division of Medical Quality, of the Board is authorized to revoke respondent's Physician's and Surgeon's Certificate pursuant to the following provisions of the California Business and Professions Code:

A. Section 2227 provides that the Division may revoke, suspend for a period not to exceed one year, or place on probation and order the payment of probation monitoring costs, the license of any licensee who has been found guilty under the Medical Practice Act.

B. Business and Professions Code section 141 provides, as relevant hereto:

"(a) For any licensee holding a license issued by a board under the jurisdiction of the department [of Consumer Affairs] a disciplinary action taken by another state, . . . for any act substantially related to the practice regulated by the California license, may be a ground for disciplinary action by the respective state licensing board. A certified copy of the record of the disciplinary action taken against the licensee by another state, . . . shall be conclusive evidence of the events related therein.

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"(b) Nothing in this section shall preclude a board from applying a specific statutory provision in the licensing act administered by that board that provides for discipline based upon a disciplinary action taken against the licensee by another state, ..."

D. Business and Professions Code section 2305, a specific statutory provision applicable to licensees of the Board, provides, as relevant hereto, that the revocation, suspension, or other discipline by another state of a license or certificate to practice medicine issued by the state to a licensee under this chapter shall constitute grounds for disciplinary action for unprofessional conduct against such licensee in this state.

9. Pursuant to its authority under Government Code section 11520, the Division finds respondent is in default and that he has waived his right to a hearing to contest the allegations in Accusation No. 16-97-73676. The Division will take action without further hearing and, based on respondent's admissions by way of default and the evidence before it (Exhibits 1, 2, and 3), the Division finds that the allegations, and each of them, contained in Accusation No. 16-97-73676 are true.

DETERMINATION OF ISSUES

1. Respondent is subject to disciplinary action pursuant to sections 141, 2227, and 2305 of the California Business and Professions Code, by reason of the Finding of Facts numbers 1 through 9, above.

2. Service of the Accusation and other related documents was proper in accordance with the law.

3. The agency has jurisdiction to adjudicate this case by default.

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DECISION AND ORDER OF THE BOARD

Physician's and Surgeon's Certificate No. A31779, heretofore issued to respondent Francis C. Chuang, M.D., is hereby revoked.

An effective date of April 10, 1998, has been assigned to this Order.

Respondent shall not be deprived of making a request for relief from default as set forth at Government Code section 11520(c) for good cause shown. However, such showing must be made in writing by way of motion to vacate the default decision and directed to the Division of Medical Quality, Medical Board of California at 1430 Howe Avenue, Sacramento, CA 95825 within seven (7) days of service of this decision.

Made this 12th day of March, 1998.

jp\default\chuang.mbc

DANIEL E. LUNGREN, Attorney General
of the State of California
RICHARD D. GARSKE
Deputy Attorney General
State Bar No. 50569
Department of Justice
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Attorneys for Complainant

BEFORE THE
DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:	Case No. 16-97-73676
FRANCIS C. CHUANG, M.D. 1256 Peacock Hill Santa Ana, CA 92705	**A C C U S A T I O N**
Physician's and Surgeon's Certificate No. A 31779,	
Respondent.	

Complainant Ron Joseph as cause for disciplinary action alleges as follows:

PARTIES

1. Complainant, Ron Joseph, is the Executive Director of the Medical Board of California (hereinafter the "Board") and brings this accusation solely in his official capacity.

2. On or about November 23, 1977, Physician's and Surgeon's Certificate No. A 31779 was issued by the Board to Francis C. Chuang, M.D. (hereinafter "respondent"), and at all times relevant to the charges brought herein, this license has

been in full force and effect. Said certificate is delinquent with an expiration date of May 31, 1994.

JURISDICTION

3. This accusation is brought before the Division of Medical Quality of the Board (hereinafter the "Division"), under the authority of the following sections of the California Business and Professions Code (hereinafter "Code"):

A. Section 2227 provides that the Division may revoke, suspend for a period not to exceed one year, or place on probation and order the payment of probation monitoring costs, the license of any licensee who has been found guilty under the Medical Practice Act.

B. Section 118(b) provides, as relevant hereto, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the time within which the license may be renewed, restored, or reinstated.

C. Section 141 provides, as relevant hereto:

"(a) For any licensee holding a license issued by a board under the jurisdiction of the department [of Consumer Affairs], a disciplinary action taken by another state, . . . for any act substantially related to the practice regulated by the California license, may be a ground for disciplinary action by the respective state licensing board. A certified copy of the record of the disciplinary action taken against the

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licensee by another state, . . . shall be conclusive evidence of the events related therein.

"(b) Nothing in this section shall preclude a board from applying a specific statutory provision in the licensing act administered by that board that provides for discipline based upon a disciplinary action taken against the licensee by another state, ... "

D. Section 2305, a specific statutory provision applicable to licensees of the Board, provides, as relevant hereto, that the revocation, suspension, or other discipline by another state of a license or certificate to practice medicine issued by the state to a licensee under this chapter shall constitute grounds for disciplinary action for unprofessional conduct against such licensee in this state.

E. Section 125.3 provides, in part, that the Board may request the administrative law judge to direct any licentiate found to have committed a violation or violations of the licensing act, to pay the Board a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

4. Section 16.01 of the 1997/1998 Budget Act of the State of California provides, in pertinent part, that:

A. No funds appropriated by this act may be expended to pay any Medi-Cal claim for any service performed by a physician while that physician's license is under suspension

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or revocation due to a disciplinary action of the Medical Board of California; and,

B. No funds appropriated by this act may be expended to pay any Medi-Cal claim for any surgical service or other invasive procedure performed on any Medi-Cal beneficiary by a physician if that physician has been placed on probation due to a disciplinary action of the Medical Board of California related to the performance of that specific service or procedure on any patient, except in any case where the board makes a determination during its disciplinary process that there exist compelling circumstances that warrant continued Medi-Cal reimbursement during the probationary period.Section provides that

CAUSE FOR DISCIPLINE

(Discipline by Another State)

5. Respondent Francis C. Chuang, M.D., is subject to disciplinary action on account of the following:

A. On or about May 28, 1996, the Board of Physician Quality Assurance (BPQA) of the State of Maryland issued charges against respondent, who was licensed as a physician and surgeon in that state, for violating the Maryland Medical Practice Act, Md. Code Ann., Health Occ.

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(HO) §14-404(a)(22).[1/] The charges were based upon an adverse action report received by the BPQA in 1993 in which respondent's hospital privileges were revoked as a result of the respondent's "administration of anesthesia inconsistent with the accepted protocol which led to hypoxia and metabolic encephalopathy."

B. On or about August 24, 1996, a hearing was held on the merits before an administrative law judge (ALJ) of the State of Maryland. On or about September 18, 1996, the ALJ issued a "Recommended Decision" in which she concluded respondent had violated the statute, as charged, "by failing to meet the standard of care as determined by an appropriate peer review."

C. On or about "November 20, 1996, the BPQA considered the ALJ's Recommended Decision" and "convened for a final decision." On or about December 31, 1996, the BPQA issued its Statement of Procedural Background, Findings of Fact, Conclusions of Law, Order, and Notice of Right to Appeal. Said Findings of Fact adopted and incorporated by reference the Findings of Fact made by the ALJ in the

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1. The letter of Geneva Goode, Secretary to the Chief for Compliance, Department of Health and Mental Hygiene, Board of Physician Quality Assurance, State of Maryland, dated May 2, 1997; and the Final Order and Opinion, Case No. 94-0961, with Appendixes, are attached hereto as Exhibit A. All matters hereinafter pleaded in this Accusation, and set off within quotation marks, are attributed to Exhibit A.

Recommended Decision issued on or about September 18, 1996.[2/] Said Order provided, in part, that the license of respondent to practice medicine in the State of Maryland be revoked.

6. Respondent Francis C. Chuang, M.D., is subject to disciplinary action for unprofessional conduct in that his license to practice medicine and surgery has been disciplined by another state, in violation of Code sections 141 and 2305, in that:

A. Complainant realleges Paragraph 5 above at this point.

B. On or about December 31, 1996, in a final order issued by the BPQA of the State of Maryland, the license of respondent to practice medicine and surgery in that state was revoked.

C. Discipline has been imposed upon respondent in the State of Maryland for acts substantially related to the practice of medicine and surgery.

PRAYER

WHEREFORE, the complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Division issue a decision:

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2. The Findings of Fact, as relevant hereto, are that the respondent, in providing anesthesia to a patient undergoing surgical repair of a hip fracture, (1) administered inadequate fluids, (2) administered excessive sedative hypnotic medication, (3) administered excessive spinal anesthesia, (4) failed to document asystole in the medical chart, (5) administered medication to increase the heart rate and blood pressure, then administered a sedative hypnotic which counteracted such medication, (6) inaccurately recorded the administration of O_2, (7) failed to take arterial blood gas, electrocardiogram, blood glucose, or electrolytes immediately when hypoxia was noted, and (8) failed to document his assessment and management of the patient's ventilation and oxygenation, consultations, and neurological status.

1. Revoking or suspending Physician's and Surgeon's Certificate No. A 31779, heretofore issued to respondent Francis C. Chuang, M.D.;

2. Ordering respondent to pay the Board the actual and reasonable costs of the investigation and enforcement of this case;

3. If placed on probation, ordering respondent to pay the costs of probation monitoring;

4. Taking such other and further action as the Division deems necessary and proper.

DATED: September 29, 1997.

Ron Joseph
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California

Complainant

03573160-SD97AD0647

Accusation No. 16-97-73676

EXHIBIT A

State of Maryland

DEPARTMENT OF HEALTH AND MENTAL HYGIENE
BOARD OF PHYSICIAN QUALITY ASSURANCE
4201 PATTERSON AVE. P.O. BOX # 2571 BALTIMORE, MD 21215-0095

Area Code 410-764-4777 FAX (410) 764-2478 TTY FOR DEAF: Balto. 410-383-7555
D.C. Metro 301-565-0451
Toll Free No: 1-800-492-6836

May 2, 1997

Hattie Johnson
Enforcement Analyst
Medical Board of California
Discipline Coordination Unit
1426 Howe Avenue, Suite 93
Sacramento, CA 95825-3236

Re: Francis C. Chuang, M.D.
Maryland License #: D43982
Address: 18452 Hollcrest Avenue
Villa Park, CA 92667

Dear Ms. Johnson:

Pursuant to your request enclosed please find a certified copy of the Board of Physician Quality Assurance (the "Board") Final Order and Opinion on the above named physician.

Sincerely,

Geneva Goode

Geneva Goode
Secretary to Chief of Compliance

Enclosure:

IN THE MATTER OF	*	BEFORE THE BOARD
FRANCIS C. CHUANG, M.D.	*	OF PHYSICIAN
Respondent	*	QUALITY ASSURANCE
License Number: D43982	*	Case Number: 94-0961
	*	OAH#:96-DHMH-BPQA-71-290

* *

FINAL ORDER AND OPINION

PROCEDURAL BACKGROUND

On May 28, 1996, the Board of Physician Quality Assurance (the"BPQA") issued charges against Francis C. Chuang, M.D. (the "Respondent") for violating the Maryland Medical Practice Act, Md. Code Ann., Health Occ. (HO) §14-404(a)(22), "[f]ails to meet appropriate standards as determined by appropriate peer review for the delivery of quality medical and surgical care performed in an outpatient surgical facility, office, hospital, or any other location in this State." The charges were based on an adverse action report received by the Board in 1993 in which Liberty Medical Center reported that Respondent's hospital privileges were revoked as a result of the Respondent's "administration of anesthesia inconsistent with the accepted protocol which led to hypoxia and metabolic encephalopathy." The charges were also based on a claim filed with Health Claims Arbitration ("HCA") in April, 1995 against the Respondent. Based on these reports, the BPQA sent the matter to the Medical and Chirurgical Faculty of Maryland's ("Med Chi") Peer Review Management Committee (the "PRMC"). The PRMC reviewed Respondent's medical and hospital records of the patient who filed the HCA claim and determined that the Respondent failed to meet the standard of care.

On July 10, 1996, a CRC was held in which the Respondent did not attend. Because the Respondent did not attend the CRC and no settlement could be reached, the CRC directed the Administrative Prosecutor to go to a hearing.

A hearing on the merits was held on August 24, 1996. Suzanne S. Fox, Administrative Law Judge (the "ALJ") presided over the hearing. On September 18, 1996, the ALJ issued a Recommended Decision wherein she concluded that Respondent had violated Md. Code Ann., Health Occ. §14-404(a)(22) by failing to meet the standard of care as determined by an appropriate peer review. The ALJ recommended that the Respondent's license be revoked, and that the Respondent may not apply for reinstatement for a period of fifteen (15) years and not until Respondent can demonstrate to the BPQA that he has obtained sufficient education, retraining and experience which will enable him to practice medicine in the State of Maryland within the standards recognized as appropriate by the BPQA.

By letter dated September 18, 1996, the parties were notified of their right to file exceptions to the Recommended Decision. No exceptions were filed by either party. On November 20, 1996, the BPQA considered the ALJ's Recommended Decision. On that date, the BPQA convened for a final decision.

FINDINGS OF FACT

After consideration of the record, BPQA adopts and incorporates by reference the Findings of Fact made by the ALJ in her Recommended Decision issued on September 18, 1996. The Recommended Decision is attached and incorporated into this Final Order as Appendix A.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, there is clear and convincing evidence to support the conclusion of a majority of the full authorized membership of the BPQA considering this case that Respondent violated the Maryland Medical Practice Act, Md. Code Ann., Health Occ. §14-404(a)(22) which states as follows:

(22) Fails to meet appropriate standards as determined by appropriate peer review for the delivery of quality medical and surgical care performed in an outpatient surgical facility, office, hospital, or any other location in this State.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, it is this 31st day of December, 1996, by a majority of the full authorized membership of the BPQA considering this case

ORDERED that the license of Respondent, Francis C. Chuang, M.D., to practice medicine in the State of Maryland is hereby REVOKED; and it is further

ORDERED that the Respondent may not apply for reinstatement for a period of at least fifteen (15) years and not until Respondent can demonstrate to the Board that he has obtained sufficient education, retraining and experience which will enable him to practice medicine in the State of Maryland within the standards recognized as appropriate by the Board.

ORDERED that this is a Final Order of the Board of Physician Quality Assurance, and, as such, is a PUBLIC DOCUMENT pursuant to Maryland State Gov't Code Ann. §§ 10-610 et seq. and is reportable to both the Federation of State Medical Boards and the National Practitioner's Data Bank.

NOTICE OF RIGHT TO APPEAL

Pursuant to Maryland Health Occupations Code Ann. §14-408, you have the right to take a direct judicial appeal. Any appeal shall be made as provided for judicial review of a final decision in the Administrative Procedure Act, State Government Article and Title 7, Chapter 200 of the Maryland Rules of Procedure.

12-31-96
Date

Suresh C. Gupta
Chair

I HEREBY ATTEST AND CERTIFY UNDER PENALTY OF PERJURY ON 3/2/97 THAT THE FORGOING DOCUMENT IS A FULL, TRUE AND CORRECT COPY OF THE ORIGINAL ON FILE IN MY OFFICE AND IN MY LEGAL CUSTODY.

EXECUTIVE DIRECTOR
MARYLAND STATE BOARD OF
PHYSICIAN QUALITY ASSURANCE

EXHIBIT A

STATE BOARD OF PHYSICIAN	*	BEFORE SUZANNE S. FOX,
QUALITY ASSURANCE	*	AN ADMINISTRATIVE LAW JUDGE
V.	*	OF THE MARYLAND OFFICE
FRANCIS C. CHUANG, M.D.	*	OF ADMINISTRATIVE HEARINGS
License No.: D43982	*	OAH No.: 96-DHMH-BPQA-71-290

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PROPOSED DECISION

STATEMENT OF THE CASE
ISSUE
SUMMARY OF THE EVIDENCE
FINDINGS OF FACT
DISCUSSION
CONCLUSIONS OF LAW
PROPOSED DISPOSITION

STATEMENT OF THE CASE

On June 3, 1996, the Maryland State Board of Physician Quality Assurance ("Board") issued charges against Francis C. Chuang, M.D. ("Respondent") for failing to meet appropriate standards as determined by appropriate peer review for the delivery of quality medical and surgical care performed in an outpatient surgical facility, office, hospital, or any other location in this State, in violation of the Medical Practice Act, Md. Health Occ. Code Ann. § 14-404(a)(22) (1991).

A prehearing conference was conducted by Administrative Law Judge Ann C. Kehinde on August 5, 1996. She issued a Pre-Hearing Report and Order on August 15, 1996, which is attached hereto as Attachment A. As noted in the Pre-Hearing Report and Order prepared by Judge Kehinde, neither the Respondent nor his representative appeared at the Pre-Hearing Conference. At the hearing, Mr. Gilbert established that the Board met its requirement to notify Respondent of the investigation and

subsequent charges against him.[1]

An evidentiary hearing was held on August 26, 1996, at the Office of Administrative Hearings, 10753 Falls Road, Lutherville, Maryland 21093, before Suzanne S. Fox, Administrative Law Judge ("ALJ"), pursuant to Md. Health Occ. Code Ann. § 14-405(a) (1991)[2]. The Respondent was neither present nor represented by counsel at the hearing. Robert Gilbert, Assistant Attorney General and administrative prosecutor for the Board, represented the Board.

Procedure for the service of notice is governed by Md. State Gov't Code Ann. §§ 10-208 and 209 (1995), and continuing jurisdiction over licensees under investigation and requirements for advising the Board of any change of address is governed by Md. Health Occ. Code Ann. § 14-316 (1991). Md. Health Occ. Code Ann. § 14-405 (d) (1991) sets the requirements for an ex parte hearing where a licensee fails to be present for a disciplinary hearing.

Procedure in this case is governed by the contested case provisions of the Administrative Procedure Act, Md. State Gov't Code Ann. §§ 10-201 through 10-227 (1995), Code of Maryland Regulations ("COMAR") 10.32.02 and the Rules of Procedure of the Office of Administrative Hearings, COMAR 28.02.01.

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1 See Board Ex. #10.

2 The actions which are the basis for the charges against the Respondent occurred in 1992, and, therefore, the 1991 Medical Practice Act, rather than the current 1994 Code volume, is applicable to these proceedings.

ISSUE

The issue in this case is whether the Respondent failed to meet appropriate standards as determined by appropriate peer review when he provided anesthesia services to a patient for a surgical hip repair on or about September 27, 1993, in violation of Md. Health Occ. Code Ann. § 14-404(a)(22) (1991).

SUMMARY OF THE EVIDENCE

Exhibits.

The Board submitted the following exhibits which were admitted into evidence:

Bd. Ex. # 1 -	Maryland licensure application
Bd. Ex. #2 -	Curriculum Vitae of Michael J. Reynolds, M.D., expert witness for the Board.
Bd. Ex. #3 -	November 3, 1995 Report of Michael J. Reynolds, M.D.
Bd. Ex. #4 -	November 14, 1995, Peer Review Committee Report.
Bd. Ex. #5 -	Charges Under the Maryland Medical Practice Act.
Bd. Ex. #7 -	Medical Records for Patient A.
Bd. Ex. #8 -	Anesthesia Record, dated September 27, 1993 (excepted from Board Ex. #7)
Bd. Ex. #9 -	Poster enlargement of Board Ex. #8, page 25 of Medical Records of Patient A. Marked for identification, but not admitted into the record
Bd. Ex. #10 -	Index of Mailings to and From the Respondent .
Bd. Ex. #11 -	Mask used for purposes of assisting in ventilation of patient during surgical procedures. Marked for identification, but NOT ADMITTED into the record.
Bd. Ex. #12 -	Endotracheal tube marked for identification, but NOT ADMITTED into the record.

The Respondent, who did not appear at the hearing, did not submit any exhibits into the record.

Testimony.

The following witnesses testified on behalf of the Board: Pamela J. Cromer, Compliance Specialist for the Board; and

Michael J. Reynolds, M.D., who testified as an expert in the area of Anesthesiology.

FINDINGS OF FACT

Having considered all of the evidence presented, I find the following facts by clear and convincing evidence:

1. At all times relevant to this proceeding, the Respondent was a licensed physician in the State of Maryland.
   a. Originally, the Respondent was issued a license to practice medicine in Maryland on or about December 3, 1992.
   b. Respondent did not apply to renew his medical license during the 1994 renewal period.
2. Respondent failed to notify the Board of his correct mailing address during the course of the investigation into the matters entailed in this proceeding.
3. In 1993, Respondent was a practicing anesthesiologist at Liberty Medical Center ("LMC").
4. On September 26, 1993, Patient A[3] was admitted to LMC after sustaining a hip fracture.
   a. Patient A is female was 69 years old, five feet, five inches tall and weighed 165 pounds at the time of her admission.
   b. On September 27, 1993, Patient A underwent a surgical repair of the hip fracture.
5. Respondent provided anesthesia to the patient during the

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[3] For purposes of confidentiality, the patient is identified in this Proposed Decision as Patient A. The Respondent is aware of the identity of this individual.

surgical repair of the fractured hip on September 27, 1993. (See Board Ex. #7 pp. 22 through 29)

a. The anesthesia started at 8:40 p.m.

b. Respondent administered 90 mg. of Propofol, a sedative hypnotic agent (70 mg. Followed by an additional 20 mg.) prior to the patient's lateral positioning for spinal anesthesia and surgery.

c. At approximately 9:07 p.m., Respondent administered 10 mg. Of Tetracaine (also known as Pontocaine), a spinal anesthetia and noted "no reflux of CSF seen." (See Board Ex. #7 p. 25)

d. Respondent then administered an additional 4 mg. of Tetracaine.

e. At about 9:10 p.m., the patient began to experience hypotension and bradycardia.

f. Respondent administered 0.4 mg. of Atropine and 30 mg. of Ephedrine.

g. Between 9:10 p.m. and 9:30 p.m., the Respondent administered another 30 mg. of Propofol, 0.4 mg. of Atropine, and initiated an epinephrine infusion. At this time, the patient was mechanically ventilated, but she was not intubated.

h. Surgery began at 9:28 p.m., and concluded at 10:25 p.m., and the anesthesia was terminated at 10:38 p.m.

i. At the conclusion of the surgery, the patient was "not awake." (See Board Ex. #7 p. 23)

6. Patient A was admitted to the post anesthesia care unit ("PACU") at approximately 10:30 p.m.

a. Between 10:30 p.m. and 11:00 p.m., the Patient was hypoxic.

b. The patient remained in the PACU for one hour and 45 minutes, during which she remained unresponsive to all stimuli.

7. At 12:30 a.m. on September 28, 1993, Patient A was transferred to the Intensive Care Unit ("ICU"). (See Board Ex. #7 p. 49)

a. At the time of the transfer, the patient was unconscious, and hypotensive.

b. At 12:50 a.m., the patient had a P_aO_2 of 74 and O_2 saturation of 94%, while receiving 100% oxygen by mask.

c. At about 5:00 a.m., the patient went into respiratory distress and experienced seizure activity. (See Board Ex. #7 p. 53)

i. A physician (not Respondent) intubated Patient A with an endotracheal tube and placed her on a ventilator.

ii. At 6:15 a.m., a chest x-ray was taken which revealed that the patient had bilateral central pulmonary infiltrates compatible with possible aspiration pneumonia. (See Board Ex. #7 p. 134)

8. In the afternoon of September 28, 1993, as electroencephalogram ("EEG") showed a moderate degree of metabolic encephalopathy. (See Board Ex. #7 p. 135)

9. A consultant, requested by the orthopedic surgeon, found the patient to have probable anoxic hypoxia encephalopathy. (See Board Ex. #7 p. 97)

10. The standard of care for the treatment of an otherwise healthy patient, age 69, who is undergoing a surgical hip repair, requires the anesthesiologist to:

a. Ensure that the patient is properly hydrated prior to administration of spinal anesthesia. The anesthesiologist should administer 500 - 1000 CCS off fluid to a patient prior to the administration of a spinal anesthesia. Spinal anesthesia causes the blood vessels in the lower part of the body to dilate and can result in a lowering of blood pressure.

b. Administer only enough Propofol, a sedative-hypnotic medication to sedate the patient. For a spinal procedure, the standard of care does not provide for administration of Propofol in an amount sufficient to induce unconsciousness.

c. Administer spinal anesthesia in a dosage based on the patient's height and the procedure to be performed. Before administering a second dose of spinal anesthesia, the standard of care requires that the anesthesiologist perform some tests to determine the level of anesthesia already administered, for example, ask the patient if he or she feels an alcohol swab being rubbed on his or her skin, or if the patient feels pin pricks.

d. Document any asystole in the anesthesia chart and employ life support measures as required, including external heart massage and assisted ventilation by means of an endotracheal tube. The endotracheal tube

is required to prevent the patient from aspirating gastric fluid which can occur during unconsciousness.

e. Assess and monitor the patient's neurological status during surgery.

f. Provide an Anesthesia Narrative Note in the medical record which accurately records any asystole, circumstances of hypotension, bradycardia and lack of responsiveness during a surgical procedure; any complications which occur during the surgical procedures and the anesthesiologist's responses; and the reason Propofol was administered after the complications occurred.

g. Ensure that the patient is properly ventilated in the PACU and take steps to diagnose the reason for a patient's hypoxia or comatose status.

h. In the event of hypoxia, take arterial blood gas, an electrocardiogram, blood glucose levels and electrolytes immediately.

i. Take affirmative steps to notify the surgeon and obtain additional consultations or arrange to meet with other physicians in order to properly assess and manage a patient who has experienced complications of asystole, hypotension, bradycardia o and hypoxia.

j. Intubate and place a hypoxic patient on a respirator with 100% O_2.

k. Take affirmative steps by means of x-ray, serum electrolytes and blood glucose to assess and manage a patient who remains comatose after surgery.

1. Document the assessment and management of the patient's ventilation and oxygenation, neurologic status and consultations post-operatively.

11. Respondent administered only 1000 CCS of fluid during the entire surgical procedure which is insufficient hydration for a patient undergoing an open hip reduction with spinal anesthesia. (See Board Ex. #8)

12. Propofol is a sedative hypnotic medication used to reduce the patient's anxiety and pain, and if administered appropriately, allows the physicians to position the patient properly with a minimum of discomfort. (Testimony of Dr. Reynolds)

13. Propofol is administered 1 mg per kilo for patients up to 55 years of age.

14. Respondent gave Patient A, who weighed 165 lbs., 70 mg of Propofol, and 10 minutes later he gave the patient an additional 20 mg of Propofol.

15. When the patient was positioned, Respondent administered 10 mg Pontocaine (Tetracaine), a spinal anesthesia, and he then administered another 4 mg of Pontocaine.

16. Pontocaine is a medication which should be administered by calculation according to the patient's height and the surgical procedure. To achieve an acceptable level of anesthesia in an operation such as an open hip reduction for a patient such as Patient A, the appropriate dosage of Pontocaine would be 6 to 8 mg. (Testimony of Dr. Reynolds).

17. Within minutes of receiving the spinal anesthesia, the patient experienced a precipitous drop in her blood pressure

and heart rate. Her blood pressure dropped to 100 systolic, and her heart rate dropped to 60. (See Board Ex. #8)

18. Respondent failed to document asystole in the medical records.

19. Respondent administered Atropine 0.4 mg. Atropine is a medication which increases the heart rate.

20. Respondent administered 30 mg of epinephrine, a medication which increases the blood pressure.

21. Patient A's vital signs remained depressed, blood pressure 100/40, and heart rate from 60 to 48, for about 15-20 minutes after the medications were administered. (See Bd. Ex. #8)

22. Respondent then administered additional Propofol to the patient. (See Bd. Ex. #8) Propofol, the sedative-hypnotic medication, depresses the heart rate and counteracts the epinephrine and Atropine. (Testimony of Dr. Reynolds)

23. Respondent's recordation of administration of O_2 during the surgery was inaccurate. (See Bd. Ex. #8)

a. Respondent stated that he used a mask, but he did not record why the mask was used.

b. Respondent recorded a tidal volume of 600, and tidal volume can be administered only through an endotracheal tube.

c. Respondent did not record use of an endotracheal tube as part of the airway management.

d. It is not possible to know from reading the anesthesia chart how the patient was being ventilated.

24. The surgery continued, uninterrupted, and ended at about

10:25 p.m. At that time, the patient was not awake, and she was taken to the post anesthesia care unit (PACU) where she remained for about 1 hour and 45 minutes. (See Board Ex. #7 p. 23)

25. Patient A remained unresponsive and hypoxic (O_2 level of 75) in the PACU.

26. Respondent did not take arterial blood gas, electrocardiogram, blood glucose or electrolytes immediately when the hypoxia was noted.

27. While the patient was in the PACU, Respondent performed a chin lift and head extension to assist the patient with her ventilation, and, 15 minutes later, he placed a mask on her to increase her oxygenation. As a result of his interventions, the patient's O_2 increased only to 92-93.

28. Adequate infusion of O_2 should raise the oxygenation level to 98-99. (Testimony of Dr. Reynolds)

29. Respondent failed to document his assessment and management of the patient's ventilation and oxygenation, consultations and neurological status.

30. Patient A suffered metabolic anoxic encephalopathy due to lack of O_2 to the brain. (Testimony of Dr. Reynolds)

31. The last address provided by Respondent to the Board was 1144 York Road, Lutherville, Maryland 21093. (See Board Ex. #10)

32. The Board attempted to correspond with Respondent at any and all addresses known to them to advise him of the investigation and proceeding against him. (See Board Ex. #10)

a. 5/12/94 - The Board, by certified mail, requested a response from Respondent. The request was mailed to 1144 York Road, Lutherville, Maryland 21093, an address provided by Liberty Medical Center. Grace Wu signed the certificate of receipt on May 18, 1994.

b. 6/10/94 - The Board received a response from the Respondent dated June 4, 1994. Respondent listed his return address as 132-1 Chung Sing Road, 1F, Changhua, Taiwan R.O.C.

c. 6/29/94 - The Board again attempted to correspond with Respondent at 1256 Peacock Hill, Santa Ana, California 92705, the address which Respondent listed as his correct address with the Board at the time of his licensure in Maryland, December 3, 1992.

d. 5/3/95 - The Board attempted to correspond with Respondent at the address provided on his June 4, 1994 letter to the Board, 132-1 Chung Sing Road, 1F, Changua, Taiwan R.O.C.

e. 8/4/95 - The Board attempted to correspond with Respondent by certified and regular mail at the following addresses: 18452 Hillcrest Avenue, Villa Park, CA 92667; 1256 Peacock Hill, Santa Ana, CA 92705, and 132-1 Chung Sing Road, 1F, Changua, Taiwan, R.O.C. A person named "Tean" signed for the letter to Hillcrest Avenue, the letter addressed to

1256 Peacock Hill was returned marked "Order Expired", and there was no response from the Taiwan address.

f. 6/29/96 - The Charging Documents were mailed certified and regular mail to the three addresses recited above. The documents sent to the Peacock Hill address were returned on 6/10/96 marked "Undeliverable as addressed forwarding order expired", the documents sent to 18452 Hillcrest Avenue were returned "Unclaimed" with notices sent on 6/3/96, 6/10/96 and 6/18/96, and there was no response from the Taiwan address.

g. 6/3/96 - The Board again attempted to correspond with Respondent by regular mail to the three addresses cited above. The documents which were sent to 1252 Peacock Hill were returned "Forwarding Order Expired". This document was resent to the correct address by Federal Express on 7/3/96.

h. 6/20/96 - The Board again attempted to correspond with Respondent by regular mail to the three addresses cited above. The document sent to 1257 Peacock Hill was returned "Return to sender FWDG order expired". This document was resent to eh correct address by Federal Express on 7/3/96.

DISCUSSION

Although the Respondent did not appear for any of the pre-hearing proceedings or the hearing, presentation by the administrative prosecutor proceeded in accordance with Md. Health Occ. Code Ann. § 14-405(d) (1994), which provides:

> Ex parte hearings. If after due notice the individual against whom action is contemplated fails or refuses to appear, nevertheless the hearing officer may hear and refer the matter to the Board for Disposition.

Additionally, the hearing regulations governing administrative hearings before the Office of Administrative Hearings under the Administrative Procedure Act empower administrative law judges to proceed ex parte or issue proposed/final default orders when a party fails to participate in a hearing after receiving proper notice. COMAR 28.02.01.20A.

In this case, the Charges against Respondent were served in accordance with Code of Maryland Regulations (COMAR) 10.32.02.03C(5). The testimony of Pamela Cromer, a Board of Physician Quality Assurance Compliant Specialist, established that service was effectuated by regular and certified mail, and the Respondent had actual notice of the investigation against him as demonstrated by his response to the Board which was sent from Taiwan on June 4, 1994. Multiple efforts were made to encourage Respondent's participation in the adjudicatory hearing. The evidence presented clearly establishes that Respondent had actual notice of the investigation of this matter, and regular and certified mail was sent to his address of record and two additional addresses which appeared on the mail he directed to the Board. Md. Health Occ. Code Ann. § 14-316(f) requires that

the licensee notify the secretary of the Board in writing of any change in his name or address within 60 days after the change.

Md. Health Occ. Code Ann. § 14-403(a) (1994) provides:

> Unless the Board agrees to accept the surrender of a license, certification, or registration of an individual the Board regulates, the individual may not surrender the license, certification, or registration nor may the license, certification, or registration lapse by operation of law while the individual is under investigation or while charges are pending.

Although the Respondent did not apply for renewal of his medical license by September 30, 1994, he was aware at that time that he was under investigation, and, in accordance with the above cited section, the license does not lapse while charges are pending.

In a case which arose in California, *Baughman v. Medical Board of California*, 40 Cal. App. 4th, 400 (Cal. App. 2 Dist. 1995), the Medical Board of California revoked the medical license of Dr. Baughman following the filing and serving of an accusation of misconduct which the physician failed to answer. The doctor challenged the decision to revoke his license on the ground that he was not properly serviced with the accusation, and thereby he was deprived of due process notice and opportunity to be heard. The court in that case decided that the physician was not denied due process by revocation of his license after he failed to appear for the hearing since he was required to keep his address on file with the agency and process was delivered by certified mail to that address. The court determined that an allegation that a physician did not personally receive notice did not establish lack of due process. The facts of the instant case mimic *Baughman* in that the Board effectuated service by regular

and certified mail to the Respondent's last address provided to the Board. Respondent cannot be heard to suffer a lack of due process on the basis that he did not receive personal service of the charges in this case.

With regard to the issue of merit in this case, Md. Health Occ. Code Ann. § 14-404(a) (1994) provides, in pertinent part:

> (a) *In general.*--Subject to the hearing provisions of § 14-405 of this subtitle, the Board, on affirmative vote of a majority of its full authorized membership, may reprimand any licensee, place any licensee on probation, or suspend or revoke a license if the licensee:
>
> (22) Fails to meet appropriate standards as determined by appropriate peer review for the delivery of quality medical and surgical care performed in an outpatient surgical facility, office, hospital, or any other location in this State.

Michael J. Reynolds, M.D., the Board's expert in Anesthesiology, established the standard of care required of an anesthesiologist in the treatment of an otherwise healthy 69 year old female patient who requires spinal anesthesia for the surgical repair of a fractured hip. An anesthesiologist is charged with insuring the general well being of the patient, rendering anesthesia, and monitoring vital signs to make sure the patient is stable.

In this case, the Respondent failed to meet the standard of care in the evaluation and treatment that he provided. He failed to hydrate the patient sufficiently prior to administration of the anesthesia. He inappropriately administered an additional dose of Propofol during resuscitation efforts. He also failed to note the patient's asystole or the method of ventilation provided to the patient on the anesthesia record.

Respondent failed to assess and manage the patient's

neurologic status appropriately by obtaining x-rays, serum electrolytes, blood glucose, brain scan or consultations with other medical professionals. He failed to document appropriately what occurred during the intraoperative phase of treatment provided to the patient: he did not create an anesthesia narrative/note in the medical record; he did not document why he administered Propofol during resuscitation efforts; he failed to document that the patient became asystolic during surgery; and he failed to document appropriately the circumstances involving the patient's hypotension, bradycardia, hypoxia and asystole, and what treatments he provided for the patient in response to these conditions.

Respondent failed to provide appropriate postoperative care for Patient A. He failed to ensure that the patient was ventilated adequately after her discharge from surgery and upon her arrival and stay in the PACU. Additionally, Respondent did not undertake appropriate therapeutic measures to address the patient's hypoxic status in a timely manner. He failed to assess and manage the patient's neurologic status during the post-operative period, and he failed to seek appropriate consultation or to engage in communications with the other physicians responsible for the care of the patient.

Additionally, Respondent failed to document appropriately what occurred during the postoperative phase of treatment provided to Patient A. He did not adequately document his assessment and management of the patient's ventilation and oxygenation in the PACU. He did not adequately document his assessment and management of the patient's neurologic status in

the PACU, and he failed to document any consultation or communication with other physicians responsible for the care of the patient.

As a result of his failure to practice anesthesiology within the accepted standard of care, the patient suffered dire consequences. Respondent has not appeared to provide any further explanation of his actions. Thus, I recommend that the Board REVOKE the medical license of the Respondent and I further recommend that the Board not consider any request for reinstatement of his license for a period of at least fifteen (15) years. The deviation from the standard of care is so pervasive and so serious that it is inconceivable that Respondent, absent a showing of satisfactory completion of comprehensive medical education and training, could satisfy the requirements necessary to maintain a license to practice medicine in the State of Maryland.

CONCLUSIONS OF LAW

Based upon the foregoing findings of fact and discussion, I conclude, as a matter of law, that the Respondent did violate Md. Health Occ. Code Ann. § 14-404(a)(22) (1994). I further conclude that, as a result, the Board may discipline the Respondent pursuant to Md. Health Occ. Code Ann. § 14-404(a) by REVOKING his

medical license in the State of Maryland without consideration of a request for reinstatement for a period of at least fifteen (15) years.

PROPOSED DISPOSITION

I PROPOSE that the charges filed by the Board on June 3, 1996, against Francis C. Chuang, M.D. be UPHELD.

I PROPOSE that the Board REVOKE the medical license of Francis C. Chuang, M.D., effective as of the issuance of the final decision in this case. I further propose that the Board not consider any request for reinstatement for a period of at least fifteen (15) years and not until Respondent can demonstrate to the Board that he has obtained sufficient education, retraining and experience which will enable him to practice medicine in the State of Maryland within the standards recognized as appropriate by the Board.

September 18, 1996
Date

Suzanne S. Fox
Administrative Law Judge

NOTICE OF RIGHT TO FILE EXCEPTIONS

Any party may file exceptions to this proposed decision with the Board of Physician Quality Assurance within fifteen (15) days of receipt of the decision, in accordance with Md. State Gov't Code Ann. § 10-216 (1995) and COMAR 10.32.02.03F.